

ADVISORY OPINION NO. 99-15

Issued On July 8, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

The Superintendent of a County Board of Education asks if it would be a violation of the Ethics Act or WV Code 61-10-15 for the spouse of a Board Member to be employed by the Board as a "Coordinator" of a Work-Based Learning program.

FACTS RELIED UPON BY THE COMMISSION

The Board has created, pursuant to legislative mandate, the position of Work-based Learning Coordinator and has posted the availability of the position. The spouse of one of the Board's Members has made application for the position.

The Coordinator is expected to spend the majority of his or her time administering the program by planning and engaging in contact with prospective businesses to which students will be sent. Less than half of the Coordinator's time will be spent in direct contact with students. The Coordinator will report to the Superintendent, but will work out of an office in a County Vocational School.

The Board has declined to interview the Board Member's spouse until the Ethics Commission rules on whether the spouse's employment would be a violation of the Ethics Act or of WV Code 61-01-15.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) provides in pertinent part that... In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control:...

West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any member of any county or district board...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control...

ADVISORY OPINION

WV Code 61-10-15 provides that is a criminal violation for certain county personnel, including members of the Board of Education, to have a direct or indirect personal financial interest in a public contract over which their public position gives them "voice, influence or control".

Although this prohibition includes employment contracts, the statute specifically provides that it will not apply to the spouse of a Board of Education member who is employed by the Board as "a principal or teacher, auxiliary or service employee."

The employment of a Board member's spouse as a full-time "Coordinator" would not violate WV Code 61-10-15, if that position falls within one of the exempt categories listed above. If it is to be included, it must be as "teacher" as it clearly does not fall into the other three.

The job description supplied by the Board establishes that the majority of the Coordinator's time will be spent implementing, sustaining and overseeing the program. Even if a majority of the Coordinator's time were spent with students, it would be spent as monitor, not as teacher or instructor.

In line with the Commission's decision in Advisory Opinion 94-18, the Commission finds that the administrative nature of the full-time Coordinator position does not bring it within the exemption available to those who are employed as teacher. Therefore, it would be a violation of WV Code 61-10-15 for the Board Member's spouse to be employed as Work-based Learning Coordinator.


Chairman